

The Argentine military took power in March, 1976 in the midst of a general breakdown in political, judicial, and socio-economic institutions which resulted in widespread terrorism and hyper-inflation. This move, and the junta's subsequent attacks on terrorism, were generally accepted by political parties and labor unions.

Since then, however, the GOA has waged an all out war not only on those it believes directly or indirectly involved in violence but also on ideological opponents and those who would challenge the harshness of government tactics.

The Argentine government continues to engage in a consistent pattern of gross violations of human rights. This includes lawyers, intellectuals, churchmen, and prolonged detention without charges, trial, or recourse to legal counsel are commonplace. Thousands of people have disappeared. Over 3,600 prisoners are being held as "executive" or state of seige prisoners with others (some say as many as 3,000) reportedly being held secretly. The last probably are, in good measure, beyond the control of central authorities. Political freedoms are non-existent. All this despite the fact that the terrorist threat has been greatly reduced. There are credible reports of headless and handless bodies, dumped at sea from airplanes by security forces being found at Atlantic beaches.

There is a strong a persistent pattern of anti-semitism in the pattern of violations. Several cases of this kind have excited the contuing intense interest of important segments of the American Jewish community.

President Videla portrays himself as the moderate within the junta, wanting to redress the worst ills of the regime. So far he has been either unable or unwilling to do much to that end, though since Christmas he has taken useful, if tentative steps. Even Argentine opponents of the regime, however, usually concede that, in the immediate future, hope for progress rests with Videla and other military "moderates."

Over 300 prisoners have probably been released since December 1977, and another 100 or so turned over to the courts for trial. A small number of those released have been re-arrested, and some of the released may be common criminals. In February, the GOA published the names of more than 1,900 detainees and more are promised. And it appears to be implementing "right of option" or voluntary exile procedures for some political prisoners. This is a very small beginning, (far short of the hope President Videla expressed to President Carter in September that the detainee problem would be resolved by the end of 1977) and other disappearances continue even in the midst of it. More may now be detained under executive order than in December. Nonetheless, it is the first tangible sign we have either that the military believes that the terrorist threat is under control; or that it is responsive to human rights pressure; or a combination of the two.

Department of State, A/GIS/IPS/SRP

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CONFIDENTIAL

- 2 -

There are conflicting pressures within Argentina--to gradually moderate its repressive policies and progressively restore judicial norms and due process, and to maintain the controls which provide security and stability which is probably welcomed by substantial elements of the business community and the population as a whole.

United States Senate

WASHINGTON, D.C. 20510

March 22, 1978

Department of State, A/GIS/IPS/SRP

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Date

The Honorable
Cyrus R. Vance
Secretary of State
Washington, DC

Dear Cy:

I understand that you may be considering, in the near future, further transfers of military arms and equipment to Argentina. I want you to know that I would be extremely concerned about such transfers at this time. Before you make a final decision, I ask that you arrange for consultations with my staff and the staff of other interested members of Congress.

Last summer, the Congress adopted Section 620B of the Foreign Assistance Act, which included a prohibition of all military sales to Argentina introduced by myself and Senator Church. Although this prohibition takes effect in the next fiscal year, it was never our intent to encourage a surge of new arms transfers in the months preceding the cutoff of military assistance and supply. Last November, I wrote to you about thousands of innocent people who have been kidnapped, detained and tortured in Argentina, and asked specifically that you raise five cases of pressing concern. I welcome the oral response that these cases were raised during your trip to Argentina, but it is my understanding that very little human rights progress of significance has occurred since that time. I would appreciate a written update on these cases, and on the human rights situation as a whole, at your earliest opportunity.

I strongly believe, therefore, that there should be no new arms transfers to Argentina, at least until substantial progress has been demonstrated toward both our human rights and our non-proliferation objectives in that country. My staff will be at your Department's disposal for early discussion of this important issue.

My thanks for your consideration of these points, and my warm personal regards,

Sincerely,

Edward M. Kennedy

FOREIGN ASSISTANCE ACT OF 1961,
AS AMENDED AUGUST 4, 1977

Sec. 620B.²⁰⁸ Prohibition Against Assistance and Sales to Argentina.—After September 30, 1975—

(1) no assistance may be furnished under chapter 2, 4, or 5 of part II of this Act to Argentina;

(2) no credits (including participation in credits) may be extended and no loan may be guaranteed under the Arms Export Control Act with respect to Argentina;

(3) no sales of defense articles or services may be made under the Arms Export Control Act to Argentina; and

(4) no export licenses may be issued under section 38 of the Arms Export Control Act to or for the Government of Argentina.

PUBLIC LAW 95-240—MAR. 7, 1978

Sec. 210. Any export license referred to in Section 11 of Public Law 95-92 which is issued initially on or before September 30, 1973 may from time to time thereafter be renewed, reissued or modified (or in the event of lapse of such license, replacement licenses may be issued), provided that any such renewal, reissuance or modification (or any such replacement license) does not change significantly any such license as initially issued.

Approved March 7, 1978.

FOREIGN ASSISTANCE ACT OF 1961,
AS AMENDED JUNE 30, 1976

Sec. 502B.²⁰⁹ Human Rights.—(a) (1) It is the policy of the United States, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, to promote and encourage increased respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. To this end, a principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries.

(2) It is further the policy of the United States that, except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.

November 18, 1977

MEMORANDUM

TO: D/HA - Ms. Patricia M. Derian

FROM: L - Herbert J. Hansell

SUBJECT: Interpretation of Section 502B of the
Foreign Assistance Act of 1961,
As Amended

The present section 502B of the Foreign Assistance Act of 1961, as added in 1976, is, in our view, the most sophisticated of all the current statutory provisions concerning human rights. In addition to a subsection containing definitions, it consists of three interrelated parts. These are:

- (1) statements of general and specific policy (paragraphs (1) and (2) of subsection (a));
- (2) binding directives to apply certain general criteria in the formulation and execution of security assistance programs (subsections (a) (3) and (c) (1) (C));
- (3) requirements that the Executive Branch obtain information necessary to carry out the statute's policies and directives, and that it share this information with Congress so that the Legislative Branch can evaluate how the statute is being implemented and can, if it is dissatisfied, mandate changes in that performance (subsections (b) and (c) (1) (A), (B) and (D)).

We will not belabor this memorandum with a paragraph-by-paragraph description of each of the statute's provisions. However, we have attached the text of section 502B for convenient reference, and commend a careful reading of that text in light of the following analysis.

The key provisions of section 502B are those which prescribe criteria for the formulation and conduct of security assistance programs. Specifically, the activities defined as security assistance must be formulated and carried out in a manner which furthers the policies of section 502B by --

- (1) promoting and advancing human rights;
- (2) avoiding the identification of the United States with repressive governments; and
- (3) curtailing "security assistance" to repressive governments so that what is provided is only that which is "necessitated" by "extraordinary" circumstances which would support a finding by the Secretary that continuation is in our national interest.

The statements of policy at the beginning of the section help to give meaning and direction to the broad and imprecise standards summarized above. And the reporting requirements subjecting Executive Branch decisions to Congressional scrutiny impose a measure of discipline. However, the statute leaves considerable discretion to policy makers within the Executive Branch. Its implementation in a manner compatible with legislative intent depends ultimately upon the good faith of those who are responsible for carrying out security assistance programs.

Although there will seldom be instances in which this office can say that a particular decision on a proposed grant, loan, sale or export license is compelled as a matter of law, we can, and have, repeatedly suggested the need to apply the statute's criteria in evaluating security assistance proposals. In this regard, we have counseled that the reporting

requirements of section 502B should be integrated with the application of the statute's criteria to Executive Branch decision making. In particular, it seems implicit in section 502B that the statute's reporting requirements are intended not only to inform Congress, but also to enable the Executive Branch to evaluate security assistance proposals on an informed basis. Further, it seems obvious that judgments as to whether security assistance is necessitated by circumstances which make it in the national interest should not await requests from Congress for reports under subsection (c). If these judgments are not made in the course of Executive Branch consideration of proposals it is difficult to see how we could maintain that the directives in subsection (a)(3) are being observed.

A most important feature of section 502B is that the content of security assistance programs, the degree of U.S. Government involvement in them, and their relationship to the entire range of U.S. human rights initiatives in a particular country are all highly relevant in determining whether a proposed transaction or category of transactions should proceed as being "in the national interest." It is not sufficient to conclude that there is a national security rationale that supports a continuation of security assistance. (Presumably, all security assistance serves national security interests.) If the proposed recipient country is a known human rights violator, even if that country is one where we have important security interests section 502B nevertheless requires that we consider the content of the program. For example, USG identification with the offending government may be maximized by a grant program and lessened as the extent of our involvement diminishes from credits to loan guarantees to cash sales to export licenses. Similarly, material and services which might be used directly for repressive purposes will probably tie us closer to the offender than items more likely to be used only for external defense. Of course, the dollar volume of sales or financing and the number of Americans in country to carry out the programs are also relevant. In addition, it is important to consider these variables in the context of other steps the United States is taking to promote human rights, to

discourage objectionable practices in the country concerned and to disassociate the United States from those practices.

In conclusion, section 502B does not, in our opinion, attempt to provide a basis for judgment that specific security assistance proposals are "against the law." Rather it imposes a duty upon the Executive Branch to inform itself about the status of human rights in each proposed recipient country and to shape our programs and activities there so that they support our human rights policy, with conflicts to be resolved on the basis of the national interest. In some cases, application of the standards of section 502B may result in a continuation of a program without change. In other cases, some modification or termination may be warranted. In still other cases, the continuation of the program should be accompanied by other actions which clarify the position of the United States. The final decision in each case is one of policy, to be arrived at after good faith consideration of the policies and criteria of the statute. A lack of attention to human rights factors, by virtue of section 502B, would be tantamount to a disregard for the law. This office stands ready to assist in assuring that all relevant legal considerations are taken into account in the decision making process.

Concurrences:

L/HA - Mr. Runyon
L/PM - Mr. Borek

cc: PM - Mr. Ericson
T - Mr. Marsh
D - Mr. Oxman

L:JHMichol:cdk
ext. 20460

Sec. 5921. Human Rights.—(a) (1) It is the policy of the United States, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, to promote and encourage increased respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. To this end, a principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries.

(2) It is further the policy of the United States that, except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.

(3) In furtherance of the foregoing policy the President is directed to formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States, through such programs, with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States as expressed in this section or otherwise.

(b) The Secretary of State shall transmit to the Congress, as part of the presentation materials for security assistance programs proposed for each fiscal year, a full and complete report, prepared with the assistance of the Coordinator for Human Rights and Humanitarian Affairs, with respect to practices regarding the observance of and respect for internationally recognized human rights in each country proposed as a recipient of security assistance. In determining whether a government falls within the provisions of subsection (a) (2) and in the preparation of any report or statement required under this section, consideration shall be given to—

(1) the relevant findings of appropriate international organizations, including nongovernmental organizations, such as the International Committee of the Red Cross; and

(2) the extent of cooperation by such government in permitting an unimpeded investigation by any such organization of alleged violations of internationally recognized human rights.

(c) (1) Upon the request of the Senate or the House of Representatives by resolution of either such House, or upon the request of the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, the Secretary of State shall, within thirty days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Coordinator for Human Rights and Humanitarian Affairs, with respect to the country designated in such request, setting forth—

(A) all the available information about observance of and respect for human rights and fundamental freedom in that country, and a detailed description of practices by the recipient government with respect thereto;

(B) the steps the United States has taken to—

(i) promote respect for and observance of human rights in that country and discourage any practices which are inimical to internationally recognized human rights; and

(ii) publicly or privately call attention to, and disassociate the United States and any security assistance provided for such country from, such practices;

(C) whether, in the opinion of the Secretary of State, notwithstanding any such practices—

(i) extraordinary circumstances exist which necessitate a continuation of security assistance for such country, and, if so, a description of such circumstances and the extent to which

United States Senate

WASHINGTON, D.C. 20510

March 22, 1978

PM

The Honorable
Cyrus R. Vance
Secretary of State
Washington, DC

~~Department of State, A/GIS/IPS/SRP~~
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With concurrence of: _____
_____ obtained _____ not obt. _____
IPS by *[Signature]* Date *4-20-80* - *Xo*

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My thanks for your consideration of these points, and my warm personal regards,

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THE SECRETARY OF STATE
WASHINGTON

May 1, 1978

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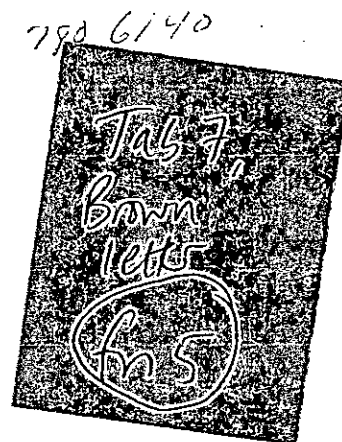
Dear Harold:

I appreciated your letter of March 17 on Argentina. I share your belief that we need to make effective use of the time and flexibility remaining before the October 1 legislative cutoff of arms sales to Argentina to persuade the Argentine Government to improve its human rights practices.

There have been some recent improvements in the human rights situation in Argentina, but these are more than outweighed by the continuing disappearances and the tragic, unexplained deaths of two nuns and five other women who were abducted in December. In view of this situation and the strong Congressional interest in our policy on arms transfers to Argentina, we think it would be best at this time not to go ahead with the pending arms transfer cases and not to grant the Argentine request to purchase training.

Instead, we suggest that a team consisting of senior State Department officials and senior U.S. military officers should meet at a high level with representatives of the Argentine Government. The team would explain that because of human rights abuses in Argentina, we are not in a position to act favorably on either the large number of arms transfer cases that has accumulated or the Argentine request to purchase training, and that only substantial, authentic human rights improvements in Argentina would permit us to change our position on these matters.

The Honorable
Harold Brown,
Secretary of Defense.

SECRET
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REPRODUCED AT THE NATIONAL ARCHIVES

THE SECRETARY OF STATE
WASHINGTON

Dear Harold:

I appreciated your letter of March 17 on Argentina and I share your belief that we need to make use of the time and flexibility remaining before the October 1 legislative cutoff of arms sales to Argentina. We are also concerned about the deleterious effect which such a cutoff might have on our ability to promote non-proliferation, human rights and conventional arms transfer goals.

We fully agree that we should make a concerted effort between now and October 1 to persuade Argentina to improve its human rights practices and ratify the Tlatelolco nuclear free zone treaty. Given the tentative, but nonetheless hopeful, signs of human rights change in Argentina, we concur with your recommendation that we approve spare parts and training, and are taking necessary action to do so. We plan to approve the sale of non-lethal spare parts and safety equipment as well as training. With respect to the latter, we will have to screen Argentine candidates to assure ourselves, insofar as it may be possible, that no one is sent to the United States who played an active role in counter-terrorism.

We will withhold action on a significant number of new equipment requests in the hope that this step will induce further, much needed change. In this connection, I particularly welcome your offer to dispatch senior military officers to Argentina to make our position clear. I would appreciate your thoughts on who might be available. We believe that Army officers would have the most influence on key Argentine counterparts.

The Honorable
Harold Brown,
Secretary of Defense.

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Box 13

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 Department of State

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APPROVED BY ARA:TATODMAN

RCS:RPOSTOR (SUBS)

SJS-S:SFARRAR (SUBS)

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TO AMEMBASSY BUENOS AIRES IMMEDIATE

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E.O. 11652: GDS

TAGS: PFOR, PINT, SHUM, ENRG, AR

SUBJECT: AMBASSADOR'S GOALS AND OBJECTIVES

AMBASSADOR'S GOALS AND OBJECTIVES -- ARGENTINA

I. ENHANCED OBSERVATION OF PERSONAL RIGHTS

-- CONTINUE TO MAKE KNOWN TO ALL LEVELS OF THE ARGENTINE GOVERNMENT AND TO THE PUBLIC THE SERIOUSNESS WITH WHICH THE U.S. VIEWS CONTINUING HUMAN RIGHTS VIOLATIONS, MAKING CLEAR THAT AN IMPROVEMENT IN OUR RELATIONS, PARTICULARLY THE PROVISION OF MILITARY AND ECONOMIC ASSISTANCE, DEPENDS UPON IMPROVEMENTS IN THE ARGENTINE HUMAN RIGHTS SITUATION.

-- URGE THE ARGENTINE GOVERNMENT TO RESTORE BASIC HUMAN RIGHTS, WITH PARTICULAR EMPHASIS ON THE RESTORATION OF THE PROCESS, THE CURBING OF OFFICIALLY COMMITTED OR SANCTIONED ABUSES, THE ESTABLISHMENT OF GREATER CENTRAL GOVERNMENT CONTROL OVER SEMI-INDEPENDENT SECURITY ELEMENTS, AND THE PUBLICATION OF LISTS OF DETAINEES.

-- ENCOURAGE THE ARGENTINE GOVERNMENT TO SIGN AND RATIFY THE AMERICAN CONVENTION ON HUMAN RIGHTS AND TO INVITE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS TO MAKE A VISIT TO ARGENTINA.

-- CONTRIBUTE TO THE INTERNATIONAL RESETTLEMENT OF ARGENTINES WHO ARE TARGETS OF POLITICAL PERSECUTION, INCLUDING RESETTLEMENT INTO THE U.S. IN LINE WITH THE REQUEST FOR AUTHORIZATION TO THE ATTORNEY GENERAL FOR A HEMISPHERIC PAROLE PROGRAM.

II. RETURN TO DEMOCRATIC INSTITUTIONS

-- ENCOURAGE AN EVOLUTION TOWARD A RETURN TO DEMOCRATIC RULE, INCLUDING THE LIFTING OF RESTRICTIONS ON POLITICAL PARTIES, LABOR UNIONS AND THE PRESS.

-- EXPAND EMBASSY CONTACTS AND WORKING RELATIONSHIPS WITH THE ENTIRE SPECTRUM OF LEGITIMATE POLITICAL PARTIES, LABOR UNIONS AND OTHER IMPORTANT SECTORS OF PUBLIC OPINION.

III. ARGENTINE SUPPORT FOR OUR NUCLEAR NON-PROLIFERATION, ARMS CONTROL POLICIES

-- SEEK TO PERSUADE THE ARGENTINE GOVERNMENT TO RATIFY AND SUPPORT THE TREATY OF TATELOLCO, TO ACCEPT FULL-SCOPE SAFEGUARDS AND FOREGO THE ACQUISITION OF AN INDEPENDENT REPROCESSING CAPABILITY.

-- ENCOURAGE ACTIVE ARGENTINE INVOLVEMENT IN THE INTERNATIONAL NUCLEAR FUEL CYCLE EVALUATION PROGRAM AND IN SUBSEQUENT STUDIES DEVOTED TO DEVELOPING NUCLEAR ENERGY AND ENSURING THAT IT IS USED FOR PEACEFUL PURPOSES.

-- MONITOR ARGENTINE NUCLEAR INTENTIONS AND ACTIVITIES (ESPECIALLY THE MILITARY AREA) FOR ANY INDICATION OF A WEAPONS PROGRAM.

IV. ARGENTINE ROLE ON ECONOMIC ISSUES

-- SEEK TO PRESERVE OR INCREASE THE U.S. SHARE OF THE ARGENTINE MARKET THROUGH AN AGGRESSIVE TRADE PROMOTION PROGRAM.

-- ENCOURAGE LIBERALIZATION OF TRADE AND INVESTMENT POLICIES.

-- ENCOURAGE ARGENTINA TO DEVELOP REALISTIC PROPOSALS FOR USING SCIENCE AND TECHNOLOGY IN MEETING DEVELOPMENT

NEEDS OF OTHER LOCS AS PART OF GOA'S PREPARATION FOR THE 1979 UN CONFERENCE ON SCIENCE AND TECHNOLOGY FOR DEVELOPMENT.

-- ENCOURAGE DEVELOPMENT PROGRAMS DESIGNED TO MEET BASIC HUMAN NEEDS.

V. A SATISFACTORY BILATERAL SECURITY RELATIONSHIP WHICH PROMOTES U.S. SECURITY INTERESTS

-- PROMOTE U.S. SECURITY INTERESTS AND MAINTAIN MILITARY RELATIONSHIPS SUPPORTIVE OF THE BROAD RANGE OF U.S. GOALS AND OBJECTIVES, INCLUDING HUMAN RIGHTS AND CONVENTIONAL ARMS RESTRAINT POLICIES. ENCOURAGE CONTINUED PARTICIPATION IN COLLECTIVE HEMISPHERIC SECURITY ARRANGEMENTS (RIO TREATY), INCLUDING PROTECTION OF LINES OF COMMUNICATIONS, ACCESS TO LOGISTICAL FACILITIES AND DENIAL OF SAME TO POTENTIAL ADVERSARIES.

-- WORK TO LIMIT INROADS OF SOVIET POLITICAL AND MILITARY INFLUENCE IN ARGENTINA.

-- TO THE DEGREE THAT WE FEASIBLY CAN PLAY AN EFFECTIVE ROLE, ENCOURAGE ARGENTINA'S PEACEFUL SETTLEMENT OF ITS DISPUTES WITH NEIGHBORING COUNTRIES.

VI. INCREASED COOPERATION ON MULTILATERAL ECONOMIC AND POLITICAL ISSUES

-- MAINTAIN US-ARGENTINE SCIENTIFIC COOPERATION, PARTICULARLY IN ANTARCTICA.

-- ENCOURAGE ARGENTINA TO ADOPT A PRAGMATIC POSITION IN THE NORTH-SOUTH DIALOGUE AND SEEN ARGENTINE SUPPORT FOR U.S. POSITIONS ON POLITICAL ISSUES IN MULTILATERAL FORA.

VII. ENHANCE BILATERAL COMMUNICATION AND LINKAGES

-- STRENGTHEN TWO-WAY COMMUNICATION AND INSTITUTIONAL

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Department of State

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PAGE 02 OF 02 STATE 037632

LIES THROUGH INFORMATION, EDUCATIONAL AND CULTURAL
EXCHANGE PROGRAMS IN SUPPORT OF U.S. BILATERAL AND
GLOBAL OBJECTIVES AND BROADER MUTUAL UNDERSTANDING.

-- ENCOURAGE ADMINISTRATION, CONGRESSIONAL, LABOR AND
OTHER VISITS TO ARGENTINA TO UNDERLINE U.S. CONCERN
FOR BASIC HUMAN RIGHTS AND DEMOCRATIC PRINCIPLES.

VIII. NARCOTICS CONTROL

-- ENCOURAGE THE STRENGTHENING OF DRUG PREVENTION
MEASURES (CONSISTENT WITH DUE LEGAL PROCESS) AND
REHABILITATION PROGRAMS IN ARGENTINA.

IX. CONSULAR CONVENTION

-- NEGOTIATE A CONSULAR CONVENTION WITH THE GOVERNMENT
OF ARGENTINA. VANCE

~~SECRET~~

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